

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

MARCUS L. CLARK,	)	CASE NO. 3: 19 CV 1175
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	<u>ORDER ADOPTING</u>
	)	<u>MAGISTRATE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
STATE OF OHIO,	)	
	)	
Defendant.	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke. The Report and Recommendation (ECF # 21), issued on April 24, 2020, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of his judgment of conviction. Mr. Clark had been found guilty of one count of menacing by stalking by a jury in the Lucas County, Ohio, Court of Common Pleas. He was sentenced to seventeen months in prison and three years of post-release control.

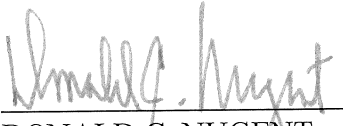
Mr. Clark appealed his case to the Sixth District Court of Appeals, Lucas County, Ohio, and the judgment was affirmed. He did not timely appeal to the Ohio Supreme Court, and his request for delayed appeal was denied. On July 23, 2018, he filed a *pro se* petition for writ of habeus corpus

in the Ohio Supreme Court. That petition was dismissed. He then filed a post-conviction petition to vacate or set aside judgment in the state trial court. That petition was denied as untimely. Mr. Clark did not appeal that decision. On April 26, 2019, he filed the instant Petition for Writ of Habeus Corpus in federal court.

The Magistrate Judge recommends that the Petitioner's claims be denied. Grounds One alleges a violation of Ohio Crim. R. 16 which is not cognizable on federal habeus review and is otherwise procedurally defaulted. Ground Two claims that there is insufficient evidence for conviction. This claim is procedurally defaulted, and Mr. Clark does not show actual prejudice resulting from any alleged violation of federal law, nor does he establish manifest injustice. His claim for ineffective assistance of trial counsel in Ground Three is procedurally defaulted. The claim for ineffective assistance of appellate counsel fails on the merits, and to the extent it could have been raised in his state court post-conviction proceedings, is also procedurally defaulted. Finally, Ground Four, claiming that his conviction is against the manifest weight of the evidence, is not cognizable under federal habeus review, moreover it should be dismissed as procedurally defaulted.

The Petitioner did not file any objections to the Report and Recommendation, nonetheless, the Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999). The Magistrate's Report and Recommendation fully and correctly addresses all of the arguments raised by the parties, and properly and justly analyzes the applicable law. This Court, therefore, adopts the Magistrate's Report in its entirety. Further, for the reasons stated in the Magistrate Judge's Report and Recommendation, a reasonable jurist could not conclude that dismissal of the Petition is in error or that Petitioner should be permitted to proceed further. Accordingly, the Court

certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: May 29, 2020